

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Emily Hebert	Team: Squad #13	CCRB Case #: 201806759	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 03/17/2018 9:15 PM	Location of Incident: [REDACTED]	Precinct: 46	18 Mo. SOL 9/17/2019	EO SOL 9/17/2019	
Date/Time CV Reported Thu, 08/16/2018 7:42 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Thu, 08/16/2018 7:42 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Thomas Geberth	07948	957649	046 PCT
2. POM Eric Bernard	19619	958308	046 PCT
3. SGT Elvin Pichardo	00515	937288	046 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Gabriel Vasquez	25142	963310	046 PCT
2. POF Jazmine Cruz	22435	962998	046 PCT
3. LT Jose Batista	00000	933637	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Elvin Pichardo	Abuse: Sergeant Elvin Pichardo stopped § 87(2)(b) [REDACTED]	[REDACTED]
B.SGT Elvin Pichardo	Abuse: Sergeant Elvin Pichardo stopped § 87(2)(b) [REDACTED]	[REDACTED]
C.SGT Elvin Pichardo	Abuse: Sergeant Elvin Pichardo stopped § 87(2)(b) [REDACTED]	[REDACTED]
D.SGT Elvin Pichardo	Abuse: Sergeant Elvin Pichardo stopped § 87(2)(b) [REDACTED]	[REDACTED]
E.SGT Elvin Pichardo	Abuse: Sergeant Elvin Pichardo frisked § 87(2)(b) [REDACTED]	[REDACTED]
F.SGT Elvin Pichardo	Abuse: Sergeant Elvin Pichardo frisked § 87(2)(b) [REDACTED]	[REDACTED]
G.SGT Elvin Pichardo	Abuse: Sergeant Elvin Pichardo frisked § 87(2)(b) [REDACTED]	[REDACTED]
H.SGT Elvin Pichardo	Abuse: Sergeant Elvin Pichardo frisked § 87(2)(b) [REDACTED]	[REDACTED]
I.SGT Elvin Pichardo	Abuse: Sergeant Elvin Pichardo searched § 87(2)(b) [REDACTED]	[REDACTED]
J.SGT Elvin Pichardo	Abuse: Sergeant Elvin Pichardo searched § 87(2)(b) [REDACTED]	[REDACTED]
K.SGT Elvin Pichardo	Abuse: Sergeant Elvin Pichardo searched § 87(2)(b) [REDACTED]	[REDACTED]
L.SGT Elvin Pichardo	Abuse: Sergeant Elvin Pichardo searched § 87(2)(b) [REDACTED]	[REDACTED]
M.POM Thomas Geberth	Abuse: Police Officer Thomas Geberth searched an individual.	[REDACTED]
N.POM Eric Bernard	Abuse: Police Officer Eric Bernard searched an individual.	[REDACTED]

Officer(s)	Allegation	Investigator Recommendation
O.SGT Elvin Pichardo	Abuse: Sergeant Elvin Pichardo refused to provide his name to § 87(2)(b)	
P.SGT Elvin Pichardo	Abuse: Sergeant Elvin Pichardo refused to provide his shield number to § 87(2)(b)	
Q.SGT Elvin Pichardo	Abuse: Sergeant Elvin Pichardo refused to provide his shield number to § 87(2)(b)	
R.SGT Elvin Pichardo	Abuse: Sergeant Elvin Pichardo refused to provide his shield number to § 87(2)(b)	
S.POM Thomas Geberth	Abuse: Police Officer Thomas Geberth refused to provide his name to § 87(2)(b)	
T.POM Thomas Geberth	Abuse: Police Officer Thomas Geberth refused to provide his shield number to § 87(2)(b)	
U.POM Thomas Geberth	Abuse: Police Officer Thomas Geberth refused to provide his shield number to § 87(2)(b)	
V.POM Thomas Geberth	Abuse: Police Officer Thomas Geberth refused to provide his shield number to § 87(2)(b)	
W.POM Eric Bernard	Abuse: Police Officer Eric Bernard refused to provide his name to § 87(2)(b)	
X.POM Eric Bernard	Abuse: Police Officer Eric Bernard refused to provide his shield number to § 87(2)(b)	
Y.POM Eric Bernard	Abuse: Police Officer Eric Bernard refused to provide his shield number to § 87(2)(b)	
Z.POM Eric Bernard	Abuse: Police Officer Eric Bernard refused to provide his shield number to § 87(2)(b)	

Case Summary

§ 87(2)(b) reported the following complaint in person at the CCRB on August 16, 2018.

On March 17, 2018, at approximately 9:15 p.m., § 87(2)(b) was inside Oxygen Hookah & Smoke at 81 East Burnside Avenue in the Bronx with his friends, § 87(2)(b) and § 87(2)(b). 46th Precinct Anti-Crime officers wearing plainclothes Sergeant Elvin Pichardo, Police Officer Thomas Geberth, and Police Officer Eric Bernard, along with uniformed 46th Precinct officers Lieutenant Jose Batista, Police Officer Jazmine Cruz, and Police Officer Gabriel Vasquez, entered the store. On Sgt. Pichardo's authority, officers stopped § 87(2)(b) and § 87(2)(b) (**Allegations A, B, C, and D – Abuse of Authority, § 87(2)(g)**). Sgt. Pichardo frisked § 87(2)(b) and § 87(2)(b) (**Allegations E, F, G, and H – Abuse of Authority, § 87(2)(g)**), and § 87(2)(b) s, § 87(2)(b) s, and § 87(2)(b) pockets were allegedly entered (**Allegations I and J – Abuse of Authority, § 87(2)(g)**) (**Allegations K and L – Abuse of Authority, § 87(2)(g)**). PO Geberth allegedly lifted up § 87(2)(b) s jacket (subsumed into Allegation I). An officer allegedly searched a bag belonging to either § 87(2)(b) or § 87(2)(b) (**Allegation M and N – Abuse of Authority, § 87(2)(g)**).

Sgt. Pichardo, PO Bernard, and PO Geberth allegedly refused to provide § 87(2)(b) with their names and shield numbers upon request, and they allegedly refused to provide their shield numbers to § 87(2)(b) and § 87(2)(b) upon request (**Allegations O through Z – Abuse of Authority, § 87(2)(g)**).

§ 87(2)(b) provided to the CCRB cell phone video footage and multiple cell phone videos that § 87(2)(b) recorded of a computer monitor as it played surveillance footage that captured this incident. The video footage is attached to IA #s 5, 6, and 7 (Board Reviews 01-03) and summarized in IA # 16 (Board Reviews 04-06). Pertinent aspects are discussed below.

Findings and Recommendations

Allegation (A) Abuse of Authority: Sergeant Elvin Pichardo stopped § 87(2)(b)

Allegation (B) Abuse of Authority: Sergeant Elvin Pichardo stopped § 87(2)(b)

Allegation (C) Abuse of Authority: Sergeant Elvin Pichardo stopped § 87(2)(b)

Allegation (D) Abuse of Authority: Sergeant Elvin Pichardo stopped § 87(2)(b)

It is undisputed that § 87(2)(b) and § 87(2)(b) were stopped. The investigation determined this was done on Sgt. Pichardo's authority.

§ 87(2)(b) stated (Board Reviews 09-10) that he, § 87(2)(b) and § 87(2)(b) had gone inside Oxygen Hookah & Smoke because it was cold outside and they knew the store owner. § 87(2)(b) and his friends were dancing, joking, laughing, and playing music. The store was open for business. § 87(2)(b) did not have a bag and was not carrying anything.

§ 87(2)(b) provided a telephone statement (Board Review 07) but was otherwise uncooperative with this investigation. (See IAs for contact attempts.)

§ 87(2)(b) stated that he was at Oxygen Hookah & Smoke "chilling" with his friends when officers entered the store and stated that they wanted to look at the store's surveillance cameras to see if § 87(2)(b) and his friends had done anything.

§ 87(2)(b) and § 87(2)(b) were unavailable to this investigation. (See IAs for contact attempts.)

§ 87(2)(b) (whose last name is unknown), § 87(2)(b), witnessed this incident and provided a telephone statement (Board Reviews 08 and 17). § 87(2)(b) stated that multiple males entered the establishment and began shopping, and approximately one minute later, two white male officers, one with a heavy build, asked the males for identification.

Sgt. Pichardo stated (Board Review 18) that, while he was driving with PO Bernard and PO Geberth, PO Bernard received a phone call from an officer whom he could not recall. The phone call informed PO Bernard that it had been learned from a Confidential Informant ("CI") that § 87(2)(b) § 87(2)(e), § 87(2)(f) No other information was provided. As they approached the specified location in their vehicle, PO Geberth and PO Bernard pointed out § 87(2)(b) and § 87(2)(b) (whom they recognized by sight) to Sgt. Pichardo, who was not familiar with them. The officers observed § 87(2)(b) and § 87(2)(b) along with two other males whom Sgt. Pichardo did not recognize, enter Oxygen Hookah & Smoke. Sgt. Pichardo, PO Bernard, and PO Geberth entered the store. Sgt. Pichardo decided to stop § 87(2)(b) and § 87(2)(b). He also decided to stop § 87(2)(b) and § 87(2)(b) because they entered the store with § 87(2)(b) and § 87(2)(b) § 87(2)(e), § 87(2)(f)

PO Bernard stated (Board Review 19) that an officer whom he could not recall informed him that it had been learned via a CI § 87(2)(e), § 87(2)(f) No other information was provided.

PO Geberth (Board Review 20) did not recall this incident.

The CCRB was unable to identify or obtain any NYPD documentation of the information provided by the CI or confirm that the CI was a registered, credible source of information.

The Stop and Frisk Reports (Board Review 11) state that, after being observed inside of 81 East Burnside Avenue, all four males were stopped in regard to CI information § 87(2)(e), § 87(2)(f) The

factors listed as leading to each stop are suspicion of concealing or possessing a weapon and matching a specific suspect description.

Sgt. Pichardo did not have any reason other than the CI information for stopping § 87(2)(b)

and § 87(2)(b) § 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

Allegation (E) Abuse of Authority: Sergeant Elvin Pichardo frisked § 87(2)(b)

Allegation (F) Abuse of Authority: Sergeant Elvin Pichardo frisked § 87(2)(b)

Allegation (G) Abuse of Authority: Sergeant Elvin Pichardo frisked § 87(2)(b)

Allegation (H) Abuse of Authority: Sergeant Elvin Pichardo frisked § 87(2)(b)

It is undisputed that § 87(2)(b) and § 87(2)(b) were frisked.

§ 87(2)(b) stated that an officer, identified via the investigation as PO Geberth, patted down his waistband, his two front pants pockets, his legs, and his upper body. Officers § 87(2)(b) could not recall which ones) frisked § 87(2)(b) and § 87(2)(b) [The investigation determined that PO Geberth frisked § 87(2)(b) and that PO Bernard frisked both § 87(2)(b) and § 87(2)(b). § 87(2)(b) stated that he and his friends all provided their identification to officers when ordered to do so except for one friend (he could not recall which one) who did not have his identification with him.

§ 87(2)(b) stated that his waist, arms, and legs were patted down.

As previously mentioned § 87(2)(b) and § 87(2)(b) were unavailable to the investigation.

§ 87(2)(b) stated that the two officers searched each males' pockets and one male's bag (analyzed separately).

The video attached to IA # 7 (Board Review 03) captures PO Geberth (the white male officer wearing a plaid shirt) seemingly frisking § 87(2)(b) and § 87(2)(b) and PO Bernard (the white male with facial hair and a grey knit cap) possibly frisking § 87(2)(b) and § 87(2)(b). Sgt. Pichardo (the Hispanic male wearing the Yankee baseball cap) is visible on scene. (Therefore, Allegations E-H have been pled to him.) The crowding inside the establishment and

the angle and distance at which the surveillance camera is positioned, as well as the fact that the video is being recorded by a non-static cell phone camera as it plays the video at an increased speed on a monitor make the rest of what the surveillance cameras may have captured indiscernible.

PO Geberth prepared § 87(2)(b)s and § 87(2)(b)s Stop and Frisk Reports and PO Bernard prepared § 87(2)(b) and § 87(2)(b)s Stop and Frisk Reports. The Stop and Frisk Reports (Board Review 11) state that, for each individual, the factors that led to the frisk are that the suspect was known to carry weapons and to commit violent crimes.

Sgt. Pichardo and PO Geberth were not familiar with any of the four males stopped prior to this incident. PO Bernard stated that § 87(2)(e), § 87(2)(f)

Though PO Bernard first said that he was personally familiar with all the males involved in this incident by name and had personal knowledge of one of them having carried a firearm in the past (although he could not recall any further details about that incident or which of the males it involved), at a different point of his interview, PO Bernard stated that he could not recall whether he or other officers ever identified § 87(2)(b) by name during the incident, since § 87(2)(b) did not provide them with identification when they requested it.

PO Geberth did not recall this incident.

§ 87(2)(e), § 87(2)(f) PO Bernard and the Stop and Frisk Reports cited prior histories with firearms as reasons why all four males were frisked. Only PO Bernard was aware of this criminal history at the time of the incident and he was unable to provide further detail about this history in his CCRB interview. Furthermore, by Sgt. Pichardo's account, § 87(2)(b) and § 87(2)(b) were stopped not based on officer recognition but because of their association with § 87(2)(b) and § 87(2)(b) § 87(2)(e), § 87(2)(f) § 87(2)(g)

Allegation (I) Abuse of Authority: Sergeant Elvin Pichardo searched § 87(2)(b)

Allegation (J) Abuse of Authority: Sergeant Elvin Pichardo searched § 87(2)(b)

Allegation (K) Abuse of Authority: Sergeant Elvin Pichardo searched § 87(2)(b)

Allegation (L) Abuse of Authority: Sergeant Elvin Pichardo searched § 87(2)(b)

§ 87(2)(b) could not recall whether he saw or learned of any officers entering § 87(2)(b)s, § 87(2)(b) or § 87(2)(b)s pockets.

§ 87(2)(b) stated that two white male officers, identified via the investigation as PO Geberth and PO Bernard, searched each of the four males' pockets. However, § 87(2)(b) and § 87(2)(b) two of the four would-be victims of this allegation, did not allege that anyone's pockets were searched except for § 87(2)(b) alleging that his own pockets were searched. Specifically, § 87(2)(b) alleged that PO Geberth, identified via the investigation, lifted up his jacket, which was zippered closed, and reached into both of his front pants pockets but did not remove anything.

Sgt. Pichardo, PO Bernard, and PO Geberth did not recall whether any officer entered § 87(2)(b) s, § 87(2)(b) s, § 87(2)(b) or § 87(2)(b) s pockets and whether any officer lifted up § 87(2)(b) s jacket.

The video footage does not capture this aspect of the incident for the reasons mentioned above.

§ 87(2)(g)

Allegation (M) Abuse of Authority: Police Officer Thomas Geberth searched

§ 87(2)(b)

Allegation (N) Abuse of Authority: Police Officer Eric Bernard searched § 87(2)(b)

§ 87(2)(b) stated that two white male officers searched one of the customer's bags. § 87(2)(b) was unable to describe the customer whose bag was searched. § 87(2)(b) and § 87(2)(b) did not describe any officer searching any civilian's bag. § 87(2)(b) stated that he did not personally have a bag during this incident.

The video footage does not capture this aspect of the incident for the reasons mentioned above.

Sgt. Pichardo, PO Geberth, and PO Bernard did not know if any officer searched any bag belonging to any of the four males during this incident.

§ 87(2)(b) was unable to describe the civilian whose bag the officers searched and § 87(2)(b) did not describe any officers ever searching anyone's bag. The officers interviewed denied knowing whether a civilian's bag was searched during this incident. § 87(2)(g)

§ 87(2)(g)

Allegation (O) Abuse of Authority: Sergeant Elvin Pichardo refused to provide his name to

§ 87(2)(b)

Allegation (P) Abuse of Authority: Sergeant Elvin Pichardo refused to provide his shield number to § 87(2)(b)

Allegation (Q) Abuse of Authority: Sergeant Elvin Pichardo refused to provide his shield number to § 87(2)(b)

Allegation (R) Abuse of Authority: Sergeant Elvin Pichardo refused to provide his shield number to § 87(2)(b)

Allegation (S) Abuse of Authority: Police Officer Thomas Geberth refused to provide his name to § 87(2)(b)

Allegation (T) Abuse of Authority: Police Officer Thomas Geberth refused to provide his shield number to § 87(2)(b)

Allegation (U) Abuse of Authority: Police Officer Thomas Geberth refused to provide his shield number to § 87(2)(b)

Allegation (V) Abuse of Authority: Police Officer Thomas Geberth refused to provide his shield number to § 87(2)(b)

Allegation (W) Abuse of Authority: Police Officer Eric Bernard refused to provide his name to § 87(2)(b)

Allegation (X) Abuse of Authority: Police Officer Eric Bernard refused to provide his shield number to § 87(2)(b)

Allegation (Y) Abuse of Authority: Police Officer Eric Bernard refused to provide his shield number to § 87(2)(b)

Allegation (Z) Abuse of Authority: Police Officer Eric Bernard refused to provide his shield number to § 87(2)(b)

§ 87(2)(b) stated that, at a moment that he believed was captured in the video attached to IA # 6, he said to the plainclothes officers who had stopped him (identified via the investigation as Sgt. Pichardo, PO Geberth, and PO Bernard), “I want all your names and badge numbers.” No officer responded to his request except for Sgt. Pichardo who said that § 87(2)(b) could read his shield number off of the shield he was wearing, to which § 87(2)(b) did not respond. § 87(2)(b) also believed that, at another moment that he said was captured in the video attached to IA # 6, § 87(2)(b) and § 87(2)(b) all asked the same officers for their shield numbers, but no officer responded. § 87(2)(b) did write down, in a note on his cell phone, the names and shield numbers of the uniformed officers who were present (Lt. Batista, PO Cruz, and PO Vasquez), but not Sgt. Pichardo, PO Geberth, and PO Bernard.

§ 87(2)(b) and § 87(2)(b) did not describe any civilian ever asking any officers for their names or

shield numbers. § 87(2)(g)

Sgt. Pichardo stated that, while at least one of the four males was recording a video, one of the four males (Sgt. Pichardo could not recall whom) asked multiple officers for their names and shield numbers, and Sgt. Pichardo, PO Bernard, and PO Geberth each verbally provided their own names and shield numbers. Sgt. Pichardo also stated that, at a moment captured at the 00:23 timestamp in the video attached to IA # 7, § 87(2)(b) asked Sgt. Pichardo for his name and he verbally provided it.

PO Bernard and PO Geberth both did not recall if anyone ever asked them for their names and shield numbers.

The video recorded during the incident (Board Review 02) does not depict anyone requesting any officer's name or shield number or any officers verbally providing their names or shield numbers, though the recording begins in the middle of the incident. In the video attached to IA # 7 (Board Review 03), § 87(2)(b) is seen lifting up his phone and possibly recording a video on it beginning at the 01:15 timestamp – therefore this could be the approximate point at which the video attached to IA # 6 (Board Review 02) begins. Since this occurs after the moment at which Sgt. Pichardo alleges that he verbally provided his name and shield number to § 87(2)(b) it stands to reason that this would not be captured on the cell phone video attached to IA # 6 (Board Review 02).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the fifth CCRB complaint to which § 87(2)(b) has been a party, the third CCRB complaint to which § 87(2)(b) has been a party, the second CCRB complaint to which § 87(2)(b) has been a party, and the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 14).
 - § 87(2)(b)

- § 87(2)(b) [REDACTED]
- [REDACTED]
- [REDACTED]
- Sgt. Pichardo has been a member of service for 14 years, and has been a subject in nine allegations in five prior CCRB complaints, none of which were substantiated. [REDACTED]
- § 87(2)(g) [REDACTED]
- PO Geberth has been a member of service for four years, and has been a subject in five allegations in one prior CCRB complaint, none of which were substantiated. [REDACTED]
- § 87(2)(g) [REDACTED]
- PO Bernard has been a member of service for three years, and has been a subject in 11 allegations in four prior CCRB complaints, with one substantiated allegation in one case.
 - In CCRB case # 201602498, PO Bernard was the subject of a substantiated allegation of entering and/or searching a location. The Board recommended formalized training. The NYPD took no disciplinary action.
 - § 87(2)(g) [REDACTED]

Mediation, Civil and Criminal Histories

- § 87(2)(b) [REDACTED] accepted mediation for this complaint and this case was sent to Mediation on October 22, 2018. On April 18, 2019, this case was returned to the Investigations Division § 87(2)(b), § 87(2)(g) [REDACTED]
- As of June 14, 2019, neither § 87(2)(b) [REDACTED] nor § 87(2)(b) [REDACTED] has filed a Notice of Claim filed in regard to this incident (Board Review 15).
- § 87(2)(b) [REDACTED] (Board Review 16).
- § 87(2)(b) [REDACTED] (Board Review 16).
- According to OCA, as of May 9, 2019, § 87(2)(b) [REDACTED] has no prior criminal convictions (Board Review 16).
- According to OCA, as of June 19, 2019, § 87(2)(b) [REDACTED] has no prior criminal convictions (Board Review 16).

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date